

Commercial Motor Vehicle Enforcement Quarterly

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Captain's Corner

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The good news is that summer is finally here. The bad news is that orange barrels and construction zone congestion seems to be everywhere. Traffic crashes in construction zones continues to be a major concern for law enforcement and traffic safety advocates.

Crash statistics reveal that:

- 24% of fatal crashes in work zones involve a large truck.
- Most work zone crashes occur on weekdays, during daylight and on roads with a posted speed limit of 55 or higher.
- Rear-end fatal crashes are 25 times more common in work zones relative to all fatal crashes.
- Alcohol is involved in 39% of fatal work zone crashes.
- The merging process is especially problematic for drivers of large trucks.

Everyone should take responsibility for work zone safety. Some work zone safety tips include:

- Be patient and stay calm.
- Don't tailgate.
- Move to appropriate lane at first notice of a lane closure.
- Slow down.

For more information on work zone safety visit; <http://wzsafety.tamu.edu/>, website for the National Work Zone Safety Information Clearinghouse.

I have great news to report regarding seat belt usage in Michigan. Surveys just completed show that belt use by passenger vehicle occupants is at an all-time high of 94 percent. Belt use by commercial motor vehicle occupants, while much lower at approximately 56 percent, is still higher than the national average of 48 percent.

Through a combination of education and enforcement we must continue to strive to raise seat belt use by drivers of large trucks.

The Michigan State Police Motor Carrier Division is once again proud to co-sponsor with the Michigan Truck Safety Commission, The Michigan Association of Chiefs of Police (MACP) Award for Excellence in Commercial Vehicle Safety.

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This year's award program is unchanged except for one significant item. The deadline for submitting entries has been moved up to **November 15, 2006**. The nomination form for this award can be downloaded from the MACP website at: www.MichiganPoliceChiefs.org.

In closing, I want to wish all of our commercial vehicle safety partners and your families a safe and enjoyable summer.

Size and Weight

Section 257.631

Section 257.631 is a weight statute that stands separately from other Michigan weight laws. It only applies to public bridges, causeways and viaducts, normally on rural roads, that have been posted by the county road commission or MDOT.

Subsection (2) clearly states that it is a gross weight statute, establishing a violation only if the "...gross weight of the vehicle or combination of vehicles...exceeds the limitations established..."

Subsection (4) identifies that the gross weight shall be determined as indicated in Section 257.722(7). Currently, Section 257.722(7) is the "frost law" provision. However, as of the last time that Section 257.631 was amended, Section 257.722(7) was the current Section 257.722(10). Subsection (10) states that the gross weight can be determined by adding all the individual axle weights of the vehicle.

A fine schedule is found in subsection (3), prorated by cents per pound. While similar to the one found in Section 257.724, it does differ in that it doesn't start until the vehicle is 2,500 lbs. overweight, and the cents charged per pound are different.

Implements of husbandry are exempt from the weight limitations of this section, as are farm vehicles that are moving to and from locations that are "...otherwise reasonably inaccessible to vehicles performing the essential agricultural function."

There is an additional provision that allows MDOT or the county road commission to investigate bridge damage and, if the structure is defective, the authority can set weight and speed limitations at its discretion, which must be posted.

Exemptions from Weight Law

There has been a lot of confusion over the years as to what vehicles are exempt from weight laws.

One exemption is found in Section 257.603(6). Section 603 is the section that allows government vehicles to ignore traffic control devices and other traffic laws in emergencies. Subsection (6) extends the traffic law exemption to construction operations. It states that vehicles "...while actually engaged in work upon the surface of a highway..." are exempt from traffic laws but "...not...when traveling to or from work." The subsection goes on to say that **vehicles owned by public highway authorities** are exempt from **"...size and width..."** when proceeding to or from work on **public highways**. No provision exempting government vehicles from the weight laws exists in state statute.

The other exemptions to Michigan's weight law can be found in Section 257.716. This section is the "catch-all" provision for weight. Fire apparatus and "...an implement of husbandry incidentally moved on the highway..." are exempt from all size, weight, and load provisions.

Section 257.716 also includes provisions allowing wreckers to obtain a permit to move vehicles in excess of the size and weight statutes in emergency situations, the most typical example being a truck tractor and semitrailer combination that has broken down on the roadway.

Vehicle Code

In the October 2004 edition of the CMV Enforcement Quarterly, we discussed Special Mobile Equipment (SME). This article will expand on that discussion by looking at some specific vehicles and discussing whether or not they meet the definition of SME.

As discussed in the earlier article, SME is defined in Section 257.62 (Act 300 PA 1949), and there are two Michigan court decisions that impact that definition: 1957 Michigan Supreme Court decision in *L.A. Davidson vs. James M. Hare*, Secretary of State (351 Mich. 4, 87 N.W. 2d 131), and 1997 Michigan Court of Appeals decision in *Auto-Owners Insurance Co. vs. Stenberg Brothers, Inc.* (227 Mich. App. 45, 575, N.W. 2d 79).

Another Michigan Court of Appeals case sheds some light on the issue, although it did not directly address Section 257.62. The case dealt with the governmental immunity provision of Section 691.1405 in a vehicle crash on a public road involving a city-owned piece of equipment, manufactured by the Gradall Company. In the decision, the Court held that the forklift was a vehicle for purposes of Section 691.1405 because:

"The Gradall, a wheeled motorized vehicle operated by a driver, generally resembles a truck and moves like a truck. The significant difference between it and a truck is that mounted on the back of the vehicle is a unit that operates a hydraulic excavation tool. Although defendant argues that the Gradall is not used primarily for transportation, none of the cases cited above require the motor vehicle to be used primarily for transportation for MCL 691.1405 to apply. Moreover, when the Gradall is not being used for excavation, it can be driven along the roadways just as a truck and transports both its attached excavation unit and the driver."

This case may be used as supporting arguments for an SME case. Contact your local prosecutor for guidance before taking enforcement action. Below are several photographs and a short discussion of its status as SME.

When determining whether a vehicle is SME, keep in mind that it must be moved only incidentally on the roadway. The Secretary of State has the authority to confirm or deny a vehicle as SME for registration.

Below is a list of sections in Act 300 that SME is exempted from:

- 257.33 Civil Liability
- 257.216(d) Registration plates
- 257.302(b) A Road Roller, Snow Motor, Road Machinery, Farm Tractor or Implement of Husbandry do not need a driver license. All other SME require a driver license.
- USDOT has exempted "off-road motorized equipment from the CDL provisions. Mobile cranes are not exempted by USDOT.
- 257.707(b)(2) All Muffler Requirements.

Statutes where SME is specifically included:

- 257.688(g) Slow Moving Vehicle Sign.
- 257.710(a) Tire, Track, and Stud Requirements.
- 257.724(4) Bypassing Weigh Stations
- 257.802(7) SME Plate - optional



Tool trucks or trailers are not SME unless all the tools are removed. A full tool truck or trailer is simply moving freight, and requires registration. If equipment is permanently mounted in the truck and no other tools or supplies are carried, then it most likely does meet the SME definition.



Air compressors and generators generally meet the SME definition, provided no tools or supplies are carried on the unit.



The Secretary of State has determined that street sweepers are not SME and require registration.



Yard tractors, when moved on a public road, are not SME and require registration.



This asphalt paver has a heater to keep the asphalt from hardening. However, it is not SME, because it transports freight.



Vehicle Inspections

A common question is whether the use of a bungee cord to secure various pieces of equipment is legal under the cargo securement regulations of the FMCSR.

The FMCSR does not expressly prohibit the use of bungee cords. As with any other cargo securement device, the Working Load Limit (WLL) has to be met. The FMCSR does not specify any minimum WLL for bungee cords, so an officer would have to obtain the WLL from the manufacturer to justify enforcement action, since there is no requirement to mark devices. If the equipment appears secure, officers should use discretion. The Division's position prohibiting the securement of sod by the use of tarps and bungee cords has not changed.

Reminders

- Be sure to review the attached synopsis of a recent USDOT/FMCSA final rule on cargo securement.
- The Michigan Department of Treasury advises that the personal production of fuel, such as bio-diesel, is subject to state and federal taxes.
- The provision in 257.723 permitting the use of registered logos in lieu of a carrier's name is not valid for interstate transportation.
- International HM shipments may display a new label and placard for Organic Peroxides (Division 5.2) effective January 1, 2007:



(No. 5.2)

Division 5.2

Organic peroxides

Symbol (flame): black or white;

Background: upper half red; lower half yellow;

Figure "5.2" in bottom corner